

August 16, 2005

DECISION AND ORDER
DEPARTMENT OF ENERGY

Implementation of Special Refund Procedures

Names of Firms: BPM Ltd.
Honeymon Drilling Co.
Intercontinental Oil
Knox Oil
Pescar Trading
Shepherd Oil, Inc.
Sierra Petroleum Co.
Thriftway Co.
Western Refining Co. (Robert J. Martin)

Date of Filing: June 21, 2005

Case Numbers: TEF-0001
TEF-0002
TEF-0003
TEF-0004
TEF-0005
TEF-0007
TEF-0008
TEF-0010
TEF-0011

I. Background

The Office of General Counsel (OGC) of the Department of Energy (DOE) filed a Petition requesting that the Office of Hearings and Appeals (OHA) formulate and implement Subpart V special refund proceedings. Under the procedural regulations of the DOE, special refund proceedings may be implemented to refund monies to persons injured by violations of the DOE petroleum price regulations, provided DOE is unable to readily identify such persons or to ascertain the amount of any refund. 10 CFR § 205.280. We have considered OGC's request to formulate refund procedures for the disbursement of monies remitted by the following firms pursuant to administrative or judicial decisions or in settlement of the DOE allegations that the firms had violated the DOE petroleum price control and allocation regulations:

BPM Ltd.
 Honeymon Drilling Co.
 Intercontinental Oil
 Knox Oil
 Pescar Trading
 Shepherd Oil, Inc.
 Sierra Petroleum Co.
 Thriftway Co.
 Western Refining Co. (Robert J. Martin)

In its Petition, OGC states that it has been unable to reasonably identify persons harmed as a result of these firms' alleged violations, or to reasonably ascertain the amount of the refund to any person that might have been harmed. We therefore have determined that the refund procedures requested by OGC are appropriate.

A total of \$1,585,576.76 has been remitted to DOE by these firms to remedy violations that occurred during the relevant audit periods. These funds are being held in an escrow account established with the United States Treasury pending a determination of their proper distribution. This Decision sets forth OHA's plan to distribute those funds.

II. Jurisdiction and Authority

The general guidelines that govern OHA's ability to formulate and implement a plan to distribute refunds are set forth at 10 CFR Part 205, Subpart V. These procedures apply in situations where the DOE cannot readily identify the persons who were injured as a result of actual or alleged violations of the regulations or ascertain the amount of the refund each person should receive. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds, *see Office of Enforcement*, 9 DOE ¶ 82,508 (1981) and *Office of Enforcement*, 8 DOE ¶ 82,597 (1981).

On June 28, 2005, the OHA issued a Proposed Decision and Order (PD&O) establishing tentative procedures to distribute the funds remitted. That PD&O was published in the *Federal Register*, and a 30-day period was provided for the submission of comments regarding our proposed refund plan. *See* 70 FR 38901 (July 6, 2005). More than 30 days have elapsed and OHA has received no comments concerning these proposed refund procedures. Consequently, the procedures will be adopted as proposed.

III. Refund Procedures

A. Allocation of Remitted Funds

The alleged violations by the above-named firms all concerned the sale of crude oil. Under these circumstances, all of the funds remitted will be allocated for restitution for parties injured by the

firms' alleged violations of the crude oil regulations.

B. Refund Procedures for Crude Oil Violations

The funds will be distributed in accordance with the DOE's Modified Statement of Restitutionary Policy in Crude Oil Cases, (MSRP), *see* 51 FR 27899 (August 4, 1986). Pursuant to the MSRP, OHA may reserve up to 20 percent of those funds for direct refunds to applicants who claim that they were injured by the crude oil violations. The remaining funds are distributed to the states and federal government for indirect restitution. We will distribute the funds remitted in accordance with the MSRP, which was issued as a result of the Settlement Agreement approved by the court in *The Department of Energy Stripper Well Exemption Litigation*, 653 F. Supp. 108 (D. Kan. 1986). Shortly after the issuance of the MSRP, the OHA issued an Order that announced that this policy would be applied in all Subpart V proceedings involving alleged crude oil violations. *See* Order Implementing the MSRP, 51 FR 29,689 (August 20, 1986) (the August 1986 Order).

Under the MSRP, 40 percent of crude oil overcharge funds will be disbursed to the federal government, another 40 percent to the states, and up to 20 percent may initially be reserved for the payment of claims to injured parties. The MSRP also specified that any funds remaining after all valid claims by injured purchasers are paid will be disbursed to the federal government and the states in equal amounts.

In April 1987, the OHA issued a Notice analyzing the numerous comments received in response to the August 1986 Order. 52 FR 11,737 (April 10, 1987) (April 10 Notice). This Notice provided guidance to claimants that anticipated filing refund applications for crude oil monies under the Subpart V regulations. In general, we stated that all claimants would be required to (1) document their purchase volumes of petroleum products during the August 19, 1973 through January 27, 1981 crude oil price control period, and (2) prove that they were injured by the alleged crude oil overcharges. Applicants who were end-users or ultimate consumers of petroleum products, whose businesses are unrelated to the petroleum industry, and who were not subject to the DOE price regulations would be presumed to have been injured by any alleged crude oil overcharges. In order to receive a refund, end-users would not need to submit any further evidence of injury beyond the volume of petroleum products purchased during the period of price controls. *See City of Columbus Georgia*, 16 DOE ¶ 85,550 (1987).

1. Individual Refund Claims

The amount of money obtained from the listed firms intended for restitution of crude oil violations is \$1,585,576.76 plus accrued interest. In accordance with the MSRP, we shall initially reserve 20 percent of those funds (\$317,115.36 plus accrued interest) for direct refunds to applicants who claim that they were injured by crude oil overcharges. We shall base refunds on a volumetric amount which has been calculated in accordance with the methodology described in the April 10 Notice. That volumetric refund amount is currently \$0.0016 per gallon. *See* 57 FR 15562 (March 24, 1995). On May 13, 2004, we announced final procedures for the distribution of the remaining crude oil

overcharge funds held by DOE, and estimated that all remaining funds would result in an additional volumetric refund amount of \$0.00072 per gallon. *See* 69 FR 29300 (May 21, 2004).

The filing deadline for refund applications in the crude oil refund proceeding was June 30, 1994. This was subsequently changed to June 30, 1995. *See* Filing Deadline Notice, 60 FR 19914 (April 20, 1995); *see also* DMLP PDO, 60 FR 32004, 32007 (June 19, 1995). Because the June 30, 1995, deadline for crude oil refund applications has passed, no new applications for restitution from purchasers of refined petroleum products based on the alleged (or established) crude oil pricing violations will be accepted for these funds. Instead, these funds will be added to the general crude oil overcharge pool used for direct restitution.

2. Payments to the States and Federal Government

Under the terms of the MSRP, the remaining 80 percent of the crude oil violation amounts subject to this Decision, or \$1,268,461.40 plus accrued interest, should be disbursed in equal shares to the states and federal government, for indirect restitution. Refunds to the states will be in proportion to the consumption of petroleum products in each state during the period of price controls. The share or ratio of the funds which each state will receive is contained in Exhibit H of the Stripper Well Settlement Agreement. When disbursed, these funds will be subject to the same limitations and reporting requirements as all other crude oil monies received by the states under the Stripper Well Agreement.

Accordingly, we will direct the DOE's Office of the Controller to transfer one-half of that amount, or \$634,230.70 plus interest, into an interest bearing subaccount for the states, and one-half or \$634,230.70 plus interest, into an interest bearing subaccount for the federal government.

It Is Therefore Ordered That:

- (1) The Director of Special Accounts and Payroll, Office of Departmental Accounting and Financial Systems Development, Controller's Office, Department of Energy, shall take all steps necessary to transfer the funds remitted by the 9 firms listed in the Appendix to this determination, plus accrued interest, pursuant to Paragraphs (2), (3), and (4) below.
- (2) The Director of Special Accounts and Payroll shall transfer \$634,230.70, plus 40 percent of all accrued interest on the funds referenced in Paragraph (1) above, into the subaccount denominated "Crude Tracking-States," Account No. 999DOE003W.
- (3) The Director of Special Accounts and Payroll shall transfer \$634,230.70, plus 40 percent of all accrued interest on the funds referenced in Paragraph (1) above, into the subaccount denominated "Crude Tracking-Federal," Account No. 999DOE002W.

(4) The Director of Special Accounts and Payroll shall transfer \$317,115.36, plus 20 percent of all accrued interest on the funds referenced in Paragraph (1) above, into the subaccount denominated "Crude Tracking-Claimants 4," Account No. 999DOE010Z.

George B. Breznay
Director
Office of Hearings and Appeals

Date: August 16, 2005

APPENDIX

<u>NAME OF FIRM</u>	<u>OHA C ASE NO.</u>	<u>CONSENT ORDER TRACKING SYSTEM (COTS) NO.</u>	<u>PRINCIPAL</u>
BPM, Ltd.	TEF-0001	6C0X00230W	\$621,220.04
Honeymon Drilling Co., Ltd.	TEF-0002	BWBBBBBBBBB	\$359.00
Intercontinental Oil Co., Inc.	TEF-0003	650X00282W	\$48,750.28
Knox Oil	TEF-0004	BLBBBBBBBBB	\$2,989.00
Pescar International Trading Corp.	TEF-0005	650X000345W	\$28,044.49
Shephard Oil, Inc.	TEF-0007	640X00439W	\$150,000.00
Sierra Petroleum Co.	TEF-0008	740C01128Z	\$21,939.89
Thriftway Company	TEF-0010	BCBBBBBBBBB	\$97,380.14
Western Refining Co.	TEF-0011	N00S90458W	\$614,893.92
		TOTAL	\$1,585,576.76